IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WA.No. 1459 of 2007

AGAINST THE JUDGEMENT IN OP.2508/2002 Dated 28/11/2006
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APPELLANT: RESPONDENTS
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1. UNION OF INDIA, REPRESENTED BY
SECRETARY TO GOVERNMENT, MINISTRY OF DEFENCE,
NEW DELHI - 110 011.

2. CONTROLLER OF DEFENCE ACCOUNTS
(PENSION), ALLAHABAD.

3. THE RECORDS OFFICER,
MADRAS ENGINEERING GROUP,
POST BOX NO.4201,
SIVAN CHETTY GARDEN POST, BANGALORE.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SR.PANEL

RESPONDENTS: PETITIONER

K.RADHAKRISHNAN NAIR,
S/O.KUNJIKANNAN NAIR,
KUTTAMBATH HOUSE,
BALLUSSERY, ERAMANGALAM POST,
QUILANDI, CALICUT DISTRICT.

BY ADV. SRI GRACIOUS KURIAKOSE

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 25/06/2007, THE COURT ON 10/08/2007
DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

Writ Appeal No 1459 of 2007

Dated: 10th August 2007

JUDGMENT

Radhakrishnan, J.

Writ petition was preferred by the respondent herein seeking a writ of certiorari to quash Ext.P5 letter dated 24.02.1997 rejecting his application for disability pension under the provisions of Regulation 173 of the Pension Regulation for the Army 1961 on the ground that the disability is neither attributable to nor aggravated by military service based on the opinion of the medical board.

2. Learned single judge allowed the writ petition and quashed the order directing the respondents to grant disability pension assessing the disability at 20% including arrears and other benefits. However, liberty was given to the respondents to assess the same by review medical board. Learned single judge while disposing of the writ petition opined as follows:

> "According to the impugned Ext P5 order the disability is not either caused or aggravated by military service. Since the

> learned counsel for the petitioner submitted that the recommendation of the medical board is in his favour, a direction was issued to produce the medical records. It is seen from the medical records that the medical board has certified that the disability did not exist before entering service and yet it is stated that the disease is constitutional nature. More interestingly, after assessing the disability to 20% temporarily, there is a recommendation for disability pension which reads as follows: "Disability as applicable".

Indisputably under Regulation 173 of the above mentioned Regulations, in case there is 20% or more disability, person invalidated out of service on that account is entitled to disability pension in case the same is caused or aggravated by military service. But in our view, the learned single judge was not properly appraised of the report of the medical board as well as the facts of this case.

3. Petitioner was enrolled in the army service on 24.07.1980. While undergoing training he had a fall as a result of which he sustained injuries. He underwent treatment in surgical ward for about two months. Thereafter he was taken to psychatric ward for treatment. Psychiatrist categorised him as medical EEE category and he was invalidated out of service on 15.08.1981. Later he made a claim for disability pension which was rejected on the ground that

disability was neither attributable to nor aggravated by military service. Petitioner was invalidated out of service on 15.8.1981 under Rule 13 (3) IV of Army Rules 1954 due to a disease “Neurosis (300)”. Medical Board examined the petitioner and submitted its opinion which reads as follows:

CONFIDENTIAL
OPINION OF THE MEDICAL BOARD

1. Did the disability/ies exist before entering service? : No

2.(a) In respect of each disability the Medical Board on the evidence before it will express its views as to whether -

(i) it is attributable to service during peace or under field service conditions; or
(ii)it has been aggravated thereby and remains so; or
(iii)it is not connected with service.

(The Board should state fully the reasons in regard to each disability on which its opinion is based)

Disability	A	B	C
Neurosis (300)	No	No	Yes

(b) In respect of each disability shown as attributable under A, the Board should state fully, the specific condition and period in service which caused the disability:

(c) In respect of each disability shown as aggravated under B, the Board should state fully:
(i) The specific condition and period in

service which aggravated the disability : N.A
(ii) Whether the effects of such aggravation still persist? : N.A
(iii) If the answer to (ii) is in the affirmative, whether effect of aggravation will persist for a material period : N.A

(d) In the case of a disability under C, the Board should state what exactly in their opinion is the cause thereof.

"The disease is constitutional in nature".

A refers to disease attributable to military service, B refers to disability aggravated by military service and C refers to the opinion of the Medical Board. Medical Board has opined that the disability "Neurosis" is neither attributable nor aggravated by military service but is a constitutional disease. Medical Board has assessed the percentage of disability as 20% and the duration of disability as two years. Medical Board opinion is that 20% disability is not attributable to military service; nor is it aggravated by military service.

4. True in part IV of the report it is stated that "disability pension as applicable". Disability pension as applicable means, if it is established that the disability is aggravated or attributable to military service. Further that noting has been made, not by the Medical Board, but by the Company Commander.

5. The apex court in a recent judgment in Controller of Defence Accounts (Pension) v. Balachandran Nair (2005 (4) KLT 703) reversed the decision of the High Court and held that the opinion of the Medical Board was clearly to the effect that the illness suffered by the respondent was not attributable to the military service and therefore he is not entitled to disability pension. Facts of that case would squarely apply to the facts of the present case. Counsel for the petitioner however placed reliance on the Full Bench decision of this court in Baby v. Union of India (2003 (3) KLT 362). We are inclined to follow the principle laid down by the apex court in Balachandran Nair's case, supra, which on facts squarely apply to the facts of this case. In such circumstances we are inclined to allow this appeal, set aside the judgment of the learned single judge and uphold the impugned order.

Sd/-

K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

10/08/2007
en/

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